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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/675,675
Filing Date: September 30, 2003
Appellant(s): FORMAN ET AL.

J.B. Kraft
(Reg. No. 19,226)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/8/08 appealing from the Office action mailed 8/9/07.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0165819	MCKNIGHT	11-2002
2004/0093295	BURNETT	5-2004
2003/0009533	SHUSTER	1-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 8, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by McKnight et al., U.S. Publication No. 2002/0165819.

3. As per claims 1 and 21, McKnight teaches the system and computer program for tracking distributed computer power to users and compensating computer power providers (McKnight: Figure 7 and paragraph 0030, “The main memory 704 provides storage of instructions and data for programs executing on the central processing system 702.” comprising:

a computer power service broker (McKnight: Figure 1, “110” and paragraph 0016, “system manager 110”);

means, associated with said broker, for soliciting each of a plurality of client computer stations on the Web to offer for general distribution over the Web computer power in excess to the computer power requirements of each respective client computer station (McKnight: paragraph 0016, “A system manager 110 integrates, organizes and manages the computing resources furnished by hosts 102 and user hosts 104 and the provision of distributed computing

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services to users 106 and other user/hosts 104.” and paragraph 0017, The Examiner notes, the host 102 is the client and the user 106 is the consumer.);

means, associated with said broker, for soliciting a plurality of consumer stations on the Web to request performance of functions requiring computer power (McKnight: paragraph 0017, “...users 106 (and user/hosts 104) agree or contract with the organization for purchasing distributed computing services utilizing the computing resources provided by hosts 102 (and other user/hosts 104). The Examiner interprets the step of agreeing or contracting with the organization to be the system manager soliciting the users to request the performance of functions requiring power.”);

means, associated with said broker, for distributing each of said requested functions requiring computer power among a plurality of said client computer stations offering said computer power (McKnight: paragraph 0017, The Examiner notes, the host providing distributed computing services to the system results in the user requests being distributed among the hosts.);

means for permitting, by each of said client computer stations, said computer power service broker to access, via the Web, the computer power of said client computer station (McKnight: Figure 1 and paragraph 0016, “A system manager 110 integrates, organizes and manages the computing resources furnished by hosts 102 and user hosts 104...”);

means for distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station (McKnight: Figure 1 and paragraph 0016, “A system manager 110 integrates, organizes and manages the computing resources furnished by hosts 102 and user hosts 104...”);

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means, associated with said broker, for tracking and for billing consumer stations for computer power used in performance of requested functions (McKnight: paragraph 0019, “The organization may then collect fees from users...” and paragraph 0020); and

means, associated with said broker, for tracking and compensating said client computer stations for said excess computer power used in performance of said requested functions (McKnight: paragraph 0019, “In consideration for the furnished computing services, the host 102 (or user/host 104) is provided compensation or incentives corresponding to the computing resources made available.”).

4. As per claim 8, McKnight teaches a method for tracking distributed computer power to users and compensating computer power providers comprising:

soliciting, through a computer power service broker, each of a plurality of client computer stations on the Web to offer for general distribution over the Web computer power in excess to the computer power requirements of each client respective computer station (McKnight: paragraph 0016, “A system manager 110 integrates, organizes and manages the computing resources furnished by hosts 102 and user hosts 104 and the provision of distributed computing services to users 106 and other user/hosts 104.” and paragraph 0017, The Examiner notes, the host 102 is the client and the user 106 is the consumer.);

soliciting, through a computer power service broker, a plurality of consumer stations on the Web to request performance of functions requiring computer power (McKnight: paragraph 0017, “...users 106 (and user/hosts 104) agree or contract with the organization for purchasing distributed computing services utilizing the computing resources provided by hosts 102 (and other user/hosts 104). The Examiner interprets the step of agreeing or contracting with the

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organization to be the system manager soliciting the users to request the performance of functions requiring power.”);

distributing, through said broker, each of said requested functions requiring computer power among a plurality of said client computer stations offering said computer power (McKnight: paragraph 0017, The Examiner notes, the host providing distributed computing services to the system results in the user requests being distributed among the hosts.);

permitting, by each of said client computer stations, said computer power service broker to access, via the Web, the computer power of said client computer station (McKnight: Figure 1 and paragraph 0016, “A system manager 110 integrates, organizes and manages the computing resources furnished by hosts 102 and user hosts 104...”);

distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station (McKnight: Figure 1 and paragraph 0016, “A system manager 110 integrates, organizes and manages the computing resources furnished by hosts 102 and user hosts 104...”);

tracking and for billing, through said broker, consumer stations for computer power used in performance of requested functions (McKnight: paragraph 0019, “The organization may then collect fees from users...” and paragraph 0020); and

tracking and compensating, through said broker, said client computer stations for said excess computer power used in performance of said requested functions (McKnight: paragraph 0019, “In consideration for the furnished computing services, the host 102 (or user/host 104) is provided compensation or incentives corresponding to the computing resources made available.”).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-3, 5, 9-10, 12, 22-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKnight et al., U.S. Publication No. 2002/0165819 in view of Burnett, U.S. Publication No. 2004/0093295.

7. As per claims 2 and 22, McKnight teaches the system and computer program of claims 1 and 21 as described above. McKnight does not teach means associated with said broker for determining market value of computer power provided by each client computer station in performance of said requested functions.

8. Burnett teaches means associated with said broker for determining market value of computer power provided by each client computer station in performance of said requested functions (Burnett: Figure 1 and paragraph 0035 – The Examiner interprets the step of generating a bill to include determining the market value of computer power provided.).

9. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system and computer program of McKnight to have included means associated with said broker for determining market value of computer power provided by each client computer station in performance of said requested functions as taught by

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Burnett for the advantage of providing reliable distributive computing capability that increases utility and economic efficiency (Burnett: paragraph 0020).

10. As per claims 3 and 23, McKnight in view of Burnett teaches the system and computer program of claims 2 and 22 as described above. Burnett further teaches means for compensating said client computer stations for said computer power pay said client computer stations the market value of the computer power provided (Burnett: Figure 1 and paragraph 0035 – The Examiner notes, a consumer pays the client for power provided in response to receiving a bill.).

11. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system and computer program of McKnight to have included means for compensating said client stations for said computer power pays said client stations the market value of the computer power provided as taught by Burnett for the advantage of providing reliable distributive computing capability that increases utility and economic efficiency (Burnett: paragraph 0020).

12. As per claims 5, 12, and 25, McKnight in view of Burnett teaches the system, method, and computer program of claims 2, 9, and 22 as described above. Burnett further teaches the market value of the computer power provided by each client computer station is determined by an amount of data processed and a type of data processing used in processing the data (Burnett: paragraph 0035 – The Examiner notes, one skilled in the art would recognize that the processing power used to complete a task is determined by the amount of data processed and the type of data processing used. The applied reference has been interpreted and applied assuming basic knowledge of one of ordinary skill in the art. According to *in re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only

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what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that, which is disclosed therein.).

13. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system, method, and computer program of McKnight to have included the market value of the computer power provided by each client computer station is determined by an amount of data processed and a type of data processing used in processing the data as taught by Burnett for the advantage of providing reliable distributive computing capability that increases utility and economic efficiency (Burnett: paragraph 0020).

14. As per claim 9, McKnight teaches the method of claim 8 as described above. McKnight does not teach the step of determining, through said broker, market value of computer power provided by each client computer station in performance of said requested functions.

15. Burnett teaches the step of determining, through said broker, market value of computer power provided by each client computer station in performance of said requested functions (Burnett: Figure 1 and paragraph 0035 – The Examiner interprets the step of generating a bill to include determining the market value of computer power provided.).

16. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of McKnight to have included the step of determining, through said broker, market value of computer power provided by each client computer station in performance of said requested functions as taught by Burnett for the advantage of providing reliable distributive computing capability that increases utility and economic efficiency (Burnett: paragraph 0020).

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17. As per claim 10, McKnight teaches the method of claim 9 as described above. Burnett further teaches compensating said client computer stations for said computer power pays said client computer stations the market value of the computer power provided (Burnett: Figure 1 and paragraph 0035 – The Examiner notes, a consumer pays the client for power provided in response to receiving a bill.).

18. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the method McKnight to have included compensating said client computer stations for said computer power pays said client computer stations the market value of the computer power provided as taught by Burnett for the advantage of providing reliable distributive computing capability that increases utility and economic efficiency (Burnett: paragraph 0020).

19. Claims 4, 11, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKnight et al., U.S. Publication No. 2002/0165819 in view of Burnett, U.S. Publication No. 2004/0093295 and further in view of Shuster, U.S. Publication No. 2003/0009533.

20. As per claims 4, 11, and 24, McKnight in view of Burnett teaches the system, method, and computer program of claims 2, 9, and 22 as described above. Burnett further teaches compensating said client stations for said computer by providing a Web document indicating the contribution of the market value of the computer power supplied (Burnett: paragraphs 0035 and 0022-0023, "...the Internet and the like for transferring data among the server". The Examiner notes, one skilled in the art would recognize that network 104 is capable of sending the bill as a Web document. The applied reference has been interpreted and applied assuming basic

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knowledge of one of ordinary skill in the art. According to *in re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that, which is disclosed therein.).

21. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system, method, and computer program of McKnight to have included compensating said client stations for said computer power by providing a Web document indicating the contribution of the market value of the computer power supplied as taught by Burnett for the advantage of providing reliable distributive computing capability that increases utility and economic efficiency (Burnett: paragraph 0020).

22. McKnight in view of Burnett does not teach consumer stations requesting the performance of functions requiring computer power are owned by charitable organizations.

23. Shuster teaches consumer stations requesting the performance of functions requiring computer power are owned by charitable organizations (Shuster: paragraph 0006 – The Examiner interprets the use of distributed computing for charitable uses to mean consumer stations are owned by charitable organizations.).

24. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified the system, method, and computer program of McKnight in view of Burnett to have included consumer stations requesting the performance of functions requiring computer power are owned by charitable organizations as taught by Shuster for the

advantage of providing a distributed computing method and system that is more effective and widespread (Shuster: paragraph 0016).

(10) Response to Argument

Appellant Argument I

Appellant argues McKnight does not anticipate the invention defined in the independent claims 1, 8, and 21 under 35 U.S.C. 102 because the reference fails to disclose the limitation each of the client stations providing power permits the power service broker access via the Web, to their available computer power, and the broker then distributes a process enabling the broker to access the computer power of a client station. Appeal Brief for Appellant, pgs. 10-11.

The Examiner respectfully disagrees. Appellant refers to page 10, lines 1-14 of their specification when describing the above claim limitation. The cited portion of the specification discloses “As will be hereinafter described in greater detail with respect to the programming of the present invention, service provider broker 53 distributes and installs over the Web 60 via the server of service provider 62 a relatively simple program routine that detects when the computer station 63 through 66 is idle and notifies a management server, e.g. server 62.” Appellant submits the simple program refers to the “process” recited in the claim and argues there is nothing in McKnight that suggests this feature. However, the specification does not define the “process” to be a simple program. The simple program is only described as an example of Appellant’s invention. Therefore, distributing a process is not limited to distributing a simple program. The Examiner notes *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243,

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1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (“The patentee’s lexicography must, of course, appear ‘with reasonable clarity, deliberateness, and precision’ before it can affect the claim.”).

Moreover, in response to Appellant's argument that the references fail to show certain features of Appellant’s invention, it is noted that the features upon which applicant relies (i.e., the broker distributes a simple program enabling the broker to access the computer power of a client station) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Also see *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993), *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67USPQ2d 1947, 1950 (Fed. Cir. 2003) (“Interpretation of descriptive statements in a patent’s written description is a difficult task, as an inherent tension exists as to whether a statement is a clear lexicographic definition or a description of a preferred embodiment. The problem is to interpret claims in view of the specification’ without unnecessarily importing limitations from the specification into the claims.”), and *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004) (“Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim.”).

McKnight teaches a system and method for providing distributed computing services via a network wherein a service provider leases computing resources on information handling systems to be purchased by customers (McKnight: paragraph 0005). McKnight further teaches hosts 102 and user/hosts 104 supply computing resources (distributed computing services) that

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are provided to one or more users 106 via network 108 (McKnight: Fig. 1; paragraph 0017).

McKnight further teaches a system manager 110 integrates, organizes, and manages the computing resources supplied by hosts 102/user hosts 104 and the provision of distributed computing services to users 106 and other user/hosts 104 (McKnight: Fig. 1; paragraph 0017).

Thus, McKnight teaches each of the hosts 102 and user/hosts 104 (client stations) providing power permits the system manager 110 (power service broker) access via the internet, to their available computer power, and the system manager 110 then distributes the process of accessing the computer power from each supplying host 102 and user/host 104. It is important to note that USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. See *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997), *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989) (“During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow...”), and *In re Pearson*, 181 USPQ 641 (CCPA 1974) (Claims in a pending application should be given their broadest possible interpretation). Using a broad and reasonable interpretation, the limitation distributing a process enabling the broker to access the computer power of a client station can refer to any process that accesses computer power. In McKnight, the process system manager 110 distributes is the step of retrieving and managing the computer resources of each host 102 and user host 104.

Regarding claim 1, the Examiner further notes *Kemco Sales, Inc. v. Control Papers Company, Inc.*, 208 F.3d 1352 (Fed. Cir. 2000). In order for an accused structure to literally meet a 35 U.S.C. section 112, paragraph 6 means-plus-function limitation, the accused structure must either be the same as the disclosed structure or be a 35 U.S.C. section 112, paragraph 6

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"equivalent," i.e., (1) perform the identical function and (2) be otherwise insubstantially different with respect to structure. See *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267, 51 U.S.P.Q.2D (BNA) 1225 (Fed. Cir. 1999); *Pennwalt Corp. v. Durand-Wayland, Inc.*, 833 F.2d 931, 934, 4 U.S.P.Q.2D (BNA) 1737, 1739 (Fed. Cir. 1987) (en banc). Under a modified version of the function-way-result methodology described in *Graver Tank & Manufacturing Co. v. Linde Air Products Co.*, 339 U.S. 605, 608, 85 U.S.P.Q. (BNA) 328, 330, 94 L. Ed. 1097, 70 S. Ct. 854 (1950), [**27] two structures may be "equivalent" for purposes of 35 U.S.C. section 112, paragraph 6 if they perform the identical function, in substantially the same way, with substantially the same result. In the present case, McKnight teaches a system that has a substantially similar structure that performs the identical function of permitting the power service broker access to the available computer power on client stations and distributing a process enabling the broker to access the computer power of a client station as recited in Appellant's invention.

Appellant Argument II

Appellant submits dependent claims 2-3, 5, 9-10, 12, 22-23, and 25 are patentable over McKnight for the same reasons set forth for the patentability of independent claims 1, 8, and 21. Appeal Brief for Appellant, pg. 11.

However, since Appellant fails to further define the dependent claim limitations over the cited prior art, all arguments regarding these claims are addressed in Appellant Argument I and Grounds of Rejection above.

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Appellant Argument III

Appellant submits dependent claims 4, 11, and 24 are patentable over McKnight for the same reasons set forth for the patentability of independent claims 1, 8, and 21. Appeal Brief for Appellant, pg. 12.

However, since Appellant fails to further define the dependent claim limitations over the cited prior art, all arguments regarding these claims are addressed in Appellant Argument I and Grounds of Rejection above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Eric Liou/

Examiner, Art Unit 3628

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